

Fair Political Practices Commission

To: Chairman Getman; Commissioners Downey, Knox and Swanson

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: November 26, 2002

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case involves a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's motion, after concluding that "the constitutional case or controversy requirement of ripeness cannot be satisfied." This resolved all claims in favor of the FPPC. The Court entered judgment accordingly on January 22, 2002, and on February 20, 2002 plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeal. California ProLife Council, Inc. filed its opening brief on June 10, 2002. The FPPC and the Attorney General filed Answering Briefs on July 25, 2002, and appellant has since filed its Reply. A hearing date has not yet been set.

2. *Danny L. Gamel et al. v. FPPC*

In September 2001, the Commission adopted the proposed decision of an Administrative Law Judge assessing a penalty of \$8,000 against plaintiffs for making campaign contributions in violation of §§ 84300 – 84302. Plaintiffs contested this decision by Writ of Mandate in the Fresno County Superior Court. On March 21, 2002, the Court upheld the Commission's determination that Dan Gamel and Rudy Olmos violated the Act, but vacated the finding against Gamel Inc. Penalties assessed against Dan Gamel were affirmed but the Court remanded the case to the Commission for reconsideration of the penalty assessed against Mr. Olmos. Plaintiffs filed a notice of appeal of the Superior Court's decision regarding the fines assessed against Mr. Gamel and the findings against Mr. Olmos. The matter has been briefed by the parties and is now awaiting a decision by the Court of Appeal.

3. *Levine et al. v. FPPC*

On January 22, 2002, four publishers of “slate mail” – Larry Levine, Tom Kaptain, Scott Hart and the California Republican Assembly – filed suit in Federal District Court alleging that the Act’s slate mail identification and disclosure requirements (§§ 84305.5 and 84305.6) violate their constitutional rights. The first of these statutes contains identification and disclaimer provisions in effect prior to enactment of Proposition 208, while § 84305.6 was introduced by Proposition 34. The Status Conference originally scheduled for April 29 was continued to June 10, 2002, to coincide with the hearing on plaintiffs’ motion for preliminary injunction before Judge Lawrence K. Karlton, and both matters were continued again to July 29, 2002. At that hearing, the Court declined to hold a Status Conference on the ground that its ruling on the preliminary injunction might affect pretrial scheduling. On September 25, 2002, the court entered a preliminary injunction barring FPPC enforcement of the challenged statutes against three of the four plaintiffs. The Commission decided not to appeal the preliminary injunction. The court has not yet issued a Scheduling Order or set a further Status Conference, which would establish a trial date and timelines for pretrial proceedings.

4. *FPPC v. Californians Against Corruption et al*

This case is now pending before the Third District Court of Appeal. The case stems from the FPPC’s 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211 of the Political Reform Act. In November 1995, the FPPC issued a default decision and order against the defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC filed a collection action in the Sacramento Superior Court to reduce the penalty to a civil judgment. The defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants’ cross-complaint/petition for writ of mandate for failure to prosecute. In March 2001, the Superior Court granted the FPPC’s motion for summary judgment in the collection action, and ordered defendants to pay the \$808,000 penalty plus interest. The defendants then filed this appeal in April 2001 and filed their opening brief in October 2001. The FPPC filed its response brief in April, and defendants timely filed their reply. The court requested supplemental briefing, which has also been completed. No date has yet been set for the hearing.

5. *Peninsula Health Care District v. FPPC*

This case challenges the Commission’s recent Opinion, *In re Hanco*, O-02-088, adopted on August 9, 2002. In its opinion the Commission concluded that a customer of Ms. Hanco’s employer could be a disqualifying source of income under certain circumstances, even though the customer dealt with Ms. Hanco’s employer through an intermediary. A Petition for Writ of Mandate was filed in the First District Court of Appeal on or about November 1, 2002. A week later, the Court of Appeal denied the writ without prejudice to re-filing in an appropriate superior court. On November 15, 2002,

plaintiff filed a new Petition in the Sacramento County Superior Court. A hearing is set for January 31, 2003, but the FPPC has requested a continuance to February 7, 2003.

6. *Larry R. Daniels v. FPPC and Office of Administrative Hearings.*

This is a Petition for Writ of Mandate filed November 7, 2002 in the Sacramento County Superior Court, directed to the proposed decision of an Administrative Law Judge which has not yet come before the Commission. The FPPC filed a preliminary opposition to the petition on November 12, 2002, asserting that Daniels had failed to exhaust his administrative remedies, since the Commission has not yet adopted, modified or rejected the proposed decision of the Administrative Law Judge, rendering the Petition premature. The Commission will consider the proposed decision at its December meeting. The court has not yet ruled on the writ petition.

7. *The Governor Gray Davis Committee v. American Taxpayers Alliance*

Plaintiff in this action sought injunctive relief relating to a television ad campaign, funded by defendant in June, 2001, which was critical of the Governor. In the lower court plaintiff successfully argued that the advertisement was express campaign advocacy, and that defendant therefore had reporting obligations as an independent expenditure committee under the Act. The lower court's decision was reversed on September 25, 2002 by the First District Court of Appeal. The appellate court rejected characterization of the advertisement as "express advocacy," and stressed its disagreement with an earlier federal decision in *FEC v. Furgatch* (9th Cir. 1987). This decision suggests that there are now two different standards for defining express advocacy, depending on whether the question is presented to a state or to a federal court. Plaintiff has petitioned for review by the California Supreme Court. The FPPC and the Attorney General have filed Amicus Letters with the Supreme Court supporting plaintiff's petition for review. The City of Los Angeles and the City of San Diego have joined in a separate Letter requesting that the Supreme Court order de-publication of the Court of Appeal's decision.

8. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC has recently filed an amended complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band has filed a Motion to Quash Service for Lack of Personal Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of its tribal sovereign immunity. A hearing on that motion is currently set for December 20, 2002.